

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Alfonso AMELIO,

Plaintiff,

v.

McCABE, WEISBERG & CONWAY, P.C.
et al.,

Defendants.

Civil Action No. 14-1611

ORDER

The court reviewed the motion to strike and vacate the motion to dismiss (ECF No. 9) and motion for a temporary restraining order (ECF No. 11) filed by plaintiff Alfonso Amelio (“plaintiff”) and defendants’ responses thereto (ECF Nos. 13 and 14). It is hereby ordered that the motion to strike and vacate and the motion for a temporary restraining order are **denied**.

By its terms, the Bankruptcy Code’s automatic stay provision applies to “the commencement or continuation ... of a judicial, administrative, or other action or proceeding *against the debtor* that was or could have been commenced before the commencement of the case under this title.” 11 U.S.C. § 362(a)(1) (emphasis added). The automatic stay does not apply to defenses raised in actions brought *by the debtor*. *ACandS, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 259 (3d Cir. 2006) (“Defenses, as opposed to counter-claims, do not violate the automatic stay because the stay does not seek to prevent defendants sued by a debtor from defending their legal rights . . .”). There is no basis for striking defendants’ motion to dismiss or granting a temporary restraining order.

Plaintiff is granted leave to file a substantive response to the motion to dismiss on or before March 13, 2015. Plaintiff’s failure to file a response will be considered consent to dismissal.

Dated: March 4, 2015

/s/ Joy Flowers Conti

Joy Flowers Conti

Chief United States District Judge